

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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| In re: TESTOSTERONE |) | Master Docket No. 14-cv-1748 |
| REPLACEMENT THERAPY |) | |
| PRODUCTS LIABILITY LITIGATION |) | MDL No. 2545 |
| |) | |
| This document relates to all cases |) | Honorable Matthew F. Kennelly |

CASE MANAGEMENT ORDER NO. 79
(Revised Schedule For Second Auxilium Bellwether Trial)

CMO # 31 (Dkt. # 1547) sets forth the protocol for selecting Auxilium bellwether trials as well as the discovery, summary judgment and *Daubert* motions, and trial schedules for the Auxilium bellwethers, where the Auxilium Defendants are the only defendants and the only product used was Testim. CMO # 37A (Dkt. # 1778) sets forth the Auxilium non-expert generic fact discovery deadline for Testim MDL bellwether trial cases. CMO #61 (Dkt. # 2024) sets forth revised deadlines for the Testim MDL bellwether trial cases. CMO #76 (Dkt #2020) dismissed with prejudice the second Auxilium MDL bellwether trial case, a defense trial selection case, *Owens v. Auxilium Pharmaceuticals, Inc. et al.*, case no. 1:14-cv-5180. Per the Court's request, the parties will now prepare the only two remaining defense pick Auxilium Testim MDL bellwether workups to replace *Owens v. Auxilium Pharmaceuticals, Inc. et al.*, case no. 1:14-cv-5180 and for a potential future Auxilium Testim MDL bellwether trial. The two bellwether cases to be worked up are:

- *Charles Cunningham v. Auxilium Pharmaceuticals, Inc.* case no. 16-cv-01058
- *Schleck v. Endo Pharmaceuticals, Inc. et al*, case no. 1:15-cv-09712

In furtherance of the advancement of this MDL, the Court hereby Orders:

I. CASE SPECIFIC NON-FACT DISCOVERY SCHEDULE

1. Discovery will continue in the aforementioned potential Bellwether Trial Cases

from November 1, 2017 through January 26, 2018.

2. This Order does not impact the non-expert discovery deadlines established in CMO 37A ¶ 6(a).

3. Pursuant to CMO 56, amended affirmative defenses will be filed within 21 days upon entry of this Order.

II. AUXILIUM BELLWETHER EXPERT DISCOVERY SCHEDULE

4. On or before December 1, 2017, Plaintiffs shall disclose expert witness testimony for each of the potential bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2). The disclosure shall include two dates prior to the deadline set forth in paragraph 7 on which the disclosed expert can give a deposition.

5. On or before December 27, 2017, Auxilium shall disclose expert witness testimony for each of the potential bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2). The disclosure shall include two dates prior to the deadline set forth in paragraph 7 on which the disclosed expert can give a deposition.

6. Disclosure of rebuttal expert witness testimony must be made by January 2, 2018. The disclosure shall include two dates prior to the deadline set forth in paragraph 7 on which the disclosed expert can give a deposition.

7. Depositions of expert witnesses shall be completed by January 26, 2018. The parties will work cooperatively and use all best efforts to schedule the deposition of Plaintiffs' expert on a particular subject matter to take place before the corresponding Auxilium expert.

8. Expert depositions will be limited to experts offering new opinions or experts who have not previously been deposed. Generic experts who have previously been deposed will not be subject to an additional deposition provided they are not offering any new

opinions. Experts who supplement their generic reports with additional opinions will be subject to an additional deposition for up to three hours. Additional time may be allowed for good cause (e.g., an expert providing generic opinions on a new area of expertise rather than simply supplementing prior opinions). Case specific experts who have previously been deposed on their generic opinions will be subject to additional depositions for up to three hours for each additional case specific report that the expert submits.

9. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases, whether pending in state or federal court. Accordingly, in order to foster cooperation between the MDL and state court litigations, counsel for the parties shall jointly seek to enter in all state court proceedings, whether already filed or hereafter filed, an order expressly agreeing that the limitations on expert discovery set forth in Rule 26(b)(4)(A)-(D) shall apply in all such state court proceedings.

III. SUMMARY JUDGMENT, DAUBERT MOTIONS and MOTIONS *IN LIMINE* IN AUXILIUM BELLWETHER CASES

9. Summary judgment motions and *Daubert* motions, if any, are to be filed by February 9, 2018.

10. Opposition to summary judgment motions and *Daubert* motions are to be filed by March 2, 2018.

11. Replies, if any, to summary judgment motions and *Daubert* motions are to be filed by March 9, 2018.

12. The Court will endeavor to rule on summary judgment motions and *Daubert*

motions are to be filed by March 28, 2018.

13. Motions *in limine*, if any, are to be filed by March 14, 2018.

14. Oppositions to motions *in limine* are to be filed by March 21, 2018.

IV. SELECTION OF SECOND BELLWETHER TRIAL

15. On February 9, the Second Bellwether Trial Case shall either be selected by the Court or by agreement of the parties subject to the Court's approval. If the parties cannot agree to which trial case to select as the Second Bellwether Trial Case, the parties shall submit simultaneous briefing on February 14, 2018, not to exceed 5 pages, advocating which case should be selected for trial. Should the Court have to decide which case will be the Second Bellwether Trial Case, the Court will endeavor to issue its ruling by February 21, 2018. If the parties agree on which case will be the Second Bellwether Trial Case, they are to file a joint report on February 14, 2018, explaining why the case they selected is an appropriate Bellwether Trial Case. If the case selected as the Second Bellwether Trial Case is disposed of before trial on a motion for summary judgment or otherwise, the case not originally selected will be substituted as the Second Bellwether Trial Case to be tried starting on the date set below.


V. SECOND AUXILIUM BELLWETHER TRIAL SCHEDULE

16. Trial Date:

(a) Auxilium Trial 2: Jury selection shall commence on April 9, 2018.

IT IS SO ORDERED.

November 6, 2017


MATTHEW F. KENNELLY
UNITED STATES DISTRICT JUDGE